

REMARKS

Applicant submits this Informal Facsimile as a draft response for the Examiner's consideration as a prelude to a telephonic interview. Applicant intends by this action to expedite putting the application into condition for allowance.

Applicants thanks the Examiner for his careful reading of the disclosure, and for the opportunity to make corrections. Applicant understands that claims 1 to 12 are pending in the application, and that the Office currently holds claims 1 to 12 as being rejected.

Office Objections:

The Office objects to the disclosure for certain informalities. Specifically, the Office finds that "42" at page 10, line 22 and "42a & 42b" at page 10, line 23 are incorrect, and the Office requires appropriate correction. Additionally, the Office suggests that --side-- be inserted after "back" in claim 6, forth line.

In response, Applicant herein amends the disclosure at the above cites to correct the typographical error of substituting 42 for 44, and amends claim 6 as suggested by the Examiner.

35 USC §112:

The Office holds claims 1-12 rejected under 35 USC §112, second paragraph, as being indefinite. The Office considers that the claims are drawn to a cleaning device and as such should positively recite a cleaning unit.

In response, Applicant herein amends claim 1 in compliance with the Office's suggestion to delete the term "mountable" and to substitute therefor the term --mounted--.

35 USC §102(a) & (b):

The Office holds instant independent claim 1 and others as being anticipated in the alternative by the following references:

- (a). Cazel (USP 1,760,815) against claims 1-4, 7 and 12;
- (b). Callender (USP 1,534,156) against claims 1, 3, 4, 7, 8 and 12;
- (c). Linville *et al.* (USP 1,389,201) against claims 1-4, 7, 11, and 12;
- (d). MacDonald (USP 6,530,105) against claims 1, 2, 5, 7, 11 and 12; and
- (e). Peake (USP 5,437,075) against claims 1, 2, 5-7, and 9.

Applicant respectfully traverses this rejection.

Applicant submits that the Office has the burden under 37 CFR §102 of establishing a *prima facie* case of anticipation. Specifically, the Federal Circuit stated in *In re Oetiker* that "[i]f the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent." *In re Oetiker*, 24 USPQ 2d 1443, 1444. To establish a *prima facie* case of anticipation, the office must show that *all* elements of *prima facie* anticipation have been met. Emphasis added.

The Federal Circuit has further stated that "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W.L. Gore & Assocs. v. Garlock*, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Additionally, it is not enough that the prior art reference disclose all the claimed elements in isolation. Rather, as stated by the Federal Circuit, "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) cites omitted, emphasis added.

Specifically, Applicant submits that the Office has failed to show in a single reference the teaching of all of the elements of instant claim 1 arranged as in the claim.

unitary frame member

Applicant does not understand the Office's cryptic comment on page 4, paragraph 7 ("Applicant's use of the term 'unitary' alone is broader than intended.") relating to the *unitary frame member* element of instant claims 1. Also, in paragraph 6 of the comments, the Office has focused on the term "integral" and tried to liken it to the term "integral." Then the Office goes on to take the position that the non-recited term "'integral' may be construed broadly to encompass parts rigidly secured together such as by fastening and welding means, citing *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

The dispositive issue regarding the MacDonald and the Peake references (d) and (e) is the construction to be made of the phrase "unitary frame member" in the body of instant independent claim 1. It is well settled that the terms of the claims must be given the broadest reasonable interpretation *consistent with appellant's specification* as it would be interpreted by one of ordinary skill in this art. *In re Morris*, 44 USPQ2d 1023, 1027-30 (Fed. Cir. 1999); *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989), emphasis added. Applicant sets forth in the disclosure at page 5, lines 21-22 that the unitary frame member is a "single piece." Applicant also states in the disclosure at page 8, lines 19-21 that "the unitary frame member 14 is constructed as a single piece." Further regarding the "single piece" limitation of the unitary frame member, Applicant discloses at page 8, lines 26-28 that the body portion element and the appendage portion element be formed from the single piece unitary frame member by bending: "It is intended that the material utilized for the single integrated piece be bendable to form the body 40 and appendage 60 portions of the unitary frame member 14."

Applicant submits that one of ordinary skill in this art would have reasonably determined from Applicant's specification (e.g., page 8, lines 19-21, and the figures) that

the phrases "unitary frame member" should be reasonably interpreted as denoting a "one piece" unit and not a number of individual pieces integrated into a "unit." See *ex parte* Barton, Jr., BPAI, Appeal No. 1996-1266 citing *Morris*, 44 USPQ2d at 1029. Therefore, the MacDonald and the Peake references (d) and (e) fail to satisfy the criteria of *prima facie* §102 anticipation, and are not proper §102 references, and any finding of anticipation or rejection of claims based on these references is likewise improper.

Regarding the Cazel, Callender and Linville *et al.*, references (a), (b) and (c) respectively, the dispositive issue is the construction to be made of the phrases "body portion" and "appendage portion" in instant independent claim 1. Again, Applicant submits that it is well settled that the terms of the claims must be given the broadest reasonable interpretation *consistent with appellant's specification* as it would be interpreted by one of ordinary skill in the art. *In re Morris* and *In re Zletz, supra*.

Applicant submits that the specification clearly defines the meets and bounds of the term "body portion" at page 5, lines 22-25 as having "a generally triangular cross-section with a first side of the triangle forming the back. . . a second side of the triangle forming the bottom. . . and the third side forming the front of the body portion." Also see page 9 lines 19-23 and page 10, lines 12-15. Therefore, if the putative body portion element pointed to by the Office in the Cazel, Callender and Linville *et al.*, references is not triangular and formed from a single frame piece they do not *prima facie* anticipate the body portion element of instant claim 1. Because the Cazel, Callender and Linville *et al.*, references do not teach or suggest a triangular body portion formed from a single frame piece, instant claim 1 is not anticipated by these references.

In further contrast, the Cazel, Callender and Linville *et al.*, references do not disclose an appendage portion formed along with the body portion from the same single frame piece, and the appendage portion being adapted to engage the bumper of a vehicle (e.g., a golf cart). Applicant submits that the phrase "engage the bumper" is meaningful and represents a real limit on the meets and bounds of the claim.

35 USC §103(a):

The Office holds claims 9-10 rejected as being obvious in view of Linville, the '201 patent. Applicant respectfully traverses this rejection.

In response, Applicant refers to the above remarks regarding independent claim 1, and submits that current the rejection of claims 9 and 10 under §103(a) is now moot.

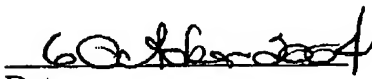
Allowable Subject Matter:

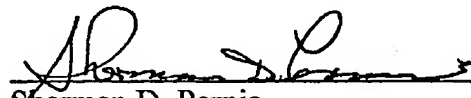
The Examiner has drafted a suggested claim considered to distinguish over the art of record in the application.

Applicant thanks the Examiner and herein adds the suggested claim as new claim 13. The new claim adds no new subject matter to the application.

Applicant believe that the above amendments and remarks are fully responsive to the Office Action mailed 3 August 2004. Applicant respectfully requests reconsideration and removal of all objections and rejections of claims, and that, in view of the above amendments and remarks, the application is now in condition for allowance. Applicant respectfully requests the Examiner to contact the undersigned to timely resolve any issues that may remain in the application in order to expedite prosecution. Alternatively, Applicant invites the Examiner to suggest alternative claim language for Applicant's consideration, in order to facilitate timely prosecution of this application.

Respectfully submitted,


Date


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281-335-4505

Docket #: TDJ-226r

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